IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12680 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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NOVA PETROCHEMICALS LTD. & 1 - Petitioner(s)
Versus
STATE OF GUAJRAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :
MR PARESH M DAVE for Petitioner(s) : 1 - 2.

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/07/2006

ORAL JUDGMENT (Per:HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a Writ of Mandamus or a Writ of Certiorari or any other appropriate Writ or order to quash the decision of the State Government contained in letter bearing F.No.IC/INC/T-7/1236 dated April 13, 2006, by which, it is held that the petitioners are not eligible for and entitled to the deferred payment of sales tax scheme under the Government Resolution dated September 11, 1995. The petitioners have further prayed to restrain the respondents from taking any action against the petitioner No.1-Company on the basis that the petitioner No.1-Company was not entitled to the

deferred payment of sales tax under the Government Resolution dated September 11, 1995.

2. The petitioner No.1 is a Company registered under the provisions of the Companies Act, 1956. It manufactures Partially Oriented Yarn, Texteurized Yarn, Micro Filament Yarn, etc. On September 11, 1995, the State Government introduced a scheme known as "*Capital Investment Incentive to Premium / Prestigious Unit Scheme, 1995-2000*". In order to trigger off accelerated industrial development and economic growth, it envisaged to give certain higher incentives to premier/ prestigious industrial units. As per the said scheme, a unit, to be eligible for the benefits contemplated therein, was required to apply for registration on or

before August 15, 2000, but the petitioner No.1-Company made an application for registration as “prestigious unit” on September 1, 2001. The application submitted by the petitioner No.1 – Company was considered by the Additional Industries Commissioner (Dev.) and the petitioner No.1-Company was informed by letter dated June 4, 2002, that the application submitted by it for provisional registration under the 1995-2000 scheme was rejected for three grounds, namely, (1) as per the provision of the Government Resolution, the unit was required to apply for registration before expiry of the scheme i.e. August 15, 2000, but the unit had applied after expiry of the scheme i.e. on September 1, 2001, (2) as per the provisions of the Government Resolution, new product should not have any production linkage with existing manufacturing process while in

the case of the petitioner No.1-Company, new product had production linkage with the existing manufacturing process and the new products were similar to the existing products, i.e. POY and (3) as per the provision of the Government Resolution, the project should have been appraised independently by one financial institute as viable project but all the projects of the petitioner No.1-Company were not appraised by a single financial institute as one project but different projects were appraised by different financial institutions. Against said decision, the petitioner No.1-Company filed a detailed representation dated June 11, 2002. The record shows that the case of the petitioner No.1 and other Companies was considered by the State level high power committee in its 31st meeting which was held on April 22, 2003. The committee observed that the

petitioner No.1-Company should have applied in time for registration but in the interest of justice, recommended to Gujarat Industrial Promotion Board to grant certain benefits to the petitioner No.1-Company as the committee was of the opinion that the petitioner No.1-Company was a good working unit. Meanwhile, the premises of the petitioner No.1-Company were raided by the officers of the Sales Tax Department on March 29, 2003. By January, 2004, the officers of the sales Tax Department recovered a sum of Rs.17,02,83,772/-. In response to the representation made by the petitioner No.1-Company, the Joint Industries Commissioner (Dev.) informed the petitioner No.1-Company by letter dated February 26, 2004, that the Government had refused to accord status of prestigious unit to the petitioner No.1-Company. Feeling aggrieved by the said

decision, the petitioners preferred Special Civil Application No.4250 of 2004. Initially, ad-interim relief was granted against recovery of interest and penalty from the petitioners, which is quite evident from order dated April 26, 2004 passed by the Division Bench in the said petition. Subsequently, by order dated August 17, 2004, Rule was issued making it returnable on April 19, 2005, and it was clarified that pendency of the petition would not preclude the petitioners from making representation to the State Government for re-considering the decision taken earlier nor would the pendency of the petition preclude the State Government from considering such representation. On the basis of the observations quoted above, the petitioners made a representation dated November 2, 2004, to the Secretary, Industries and Mines Department,

Government of Gujarat, and prayed to grant sales tax benefits by way of deferred payment of 50% of its liability. After the representation was made as noted above, Special Civil Application No.4250 of 2004 was placed for further hearing before a Division Bench comprising R.S.Garg & K.M.Mehta, JJ. The Division Bench noticed that the representation made by the petitioners on November 2, 2004, was not disposed of by the competent authority and therefore, while disposing of the petition finally vide order dated September 14, 2005, the Division bench directed the competent authority to consider the representation and continued the interim relief granted earlier in favour of the petitioners till the final disposal of the representation. In view of the direction given by the High Court in Special Civil Application No.4250 of 2004, the representation dated

November 2, 2004, filed by the petitioners has been considered and it has been rejected by the Industries Commissioner vide order dated April 13, 2006, giving rise to the instant petition.

3. The petitioners have claimed that they fulfil all the substantive conditions of the scheme and therefore, the benefit of deferred payment of tax could not have been denied to them. According to the petitioners, the first substantive condition of the scheme was that a prestigious unit should be in the nature of an industrial complex with minimum project and cost of the industrial unit at Rs.200 crores or more for Category-III areas, which condition was later on revised by reducing the investment to Rs.100 crores or more, and as the

petitioners were fulfilling this condition, the prayers made in the representation dated November 2, 2006, should have been granted by the competent authority. The petitioners have averred that the second substantive condition of the scheme was that the benefit would be available only to the first five units per Taluka and the petitioner No.1-Company being the only unit, except M/s.Zydus Cadila in Sanand Taluka, the representation made by the petitioner No.1-Company should have been accepted. The petitioners have stressed that third substantive condition of the scheme that it would be applicable to a group of new projects set up by an industrial undertaking for manufacturing one or more different products at a single location was also satisfied in the case of the petitioner No.1-Company and therefore, the competent authority was not justified

in denying the benefits under the scheme to the petitioners. What is highlighted in the petition is that having regard to the strong recommendation made by the State level high power committee to accord benefits of the scheme to the petitioners, the just prayers made by the petitioners in the representation dated November 2, 2004, should have been accepted by the competent authority. Under the circumstances, the petitioners have filed the instant petition and claimed the reliefs to which reference is made earlier.

4. This Court has heard Mr.Paresh M.Dave, learned counsel for the petitioners, at length and in great detail. This Court has also considered the documents forming part of the petition. The contention that the requirement of the scheme that the

application should be made before August 15, 2000 was merely procedural in nature but not substantive at all and therefore, the petitioner No.1-Company should have been accorded benefits under the scheme is devoid of merits. From the record of the case and more particularly, the communication dated June 4, 2002, which is produced by the petitioners at Annexure-F to the petition, it is evident that the scheme introduced by Government Resolution dated September 11, 1995, expired on August 15, 2000, whereas the petitioner No.1-Company made an application for its registration as prestigious unit on September 1, 2001, i.e. after the scheme expired. The scheme introduced by the Government Resolution dated September 11, 1995, is produced by the petitioners at Annexure-A to the petition. It may be mentioned that one of the objects of introducing the scheme was

to create large scale employment opportunities by absorbing the swelling ranks of the unemployed. As is evident from clause-4.II of the scheme, the scheme was to come into operation with effect from August 16, 1995, and was to remain in force for a period of five years, i.e. upto August 15, 2000. Thus, there is no manner of doubt that those units which were inclined to avail of the benefits contemplated by the scheme were required to make necessary application for registration either as a prestigious unit or as a premier unit before the scheme expired. Part-III of the scheme interalia provided that an industrial unit, considering itself to be eligible for prestigious / premier status under the scheme, was required to apply to Industries Commissioner in the prescribed form before the expiry of the scheme along with the details mentioned in

clause 7.1 of the scheme. A unit which made an application before expiry of the scheme along with the details and was fulfilling other criteria was entitled to the incentives as indicated in the scheme. The petitioners in this case claim that the petitioner No.1-Company is entitled to the benefit of sales tax deferment and therefore, it would be relevant to refer to the benefit of Sales Tax Deferment contemplated by the scheme, at this stage. The sales tax deferment incentive interalia provided that under the Sales Tax Deferment Incentive Scheme, the recovery of sales tax collected by the unit on sale of goods manufactured by it including intermediate products, by-products and scrap/ waste generated as incidental to manufacturing activities and Turnover tax, leviable by Government, was to be deferred and amount so deferred was to be recovered in six equal annual

installments by Sales Tax Department beginning from the financial year subsequent to the year in which the unit had exhausted limit of incentive granted to it under the scheme or after the expiry of relevant period or time limit during which deferment was available, whichever was earlier. On close scrutiny of the incentive relating to Sales Tax deferment, as envisaged by the scheme of 1995-2000, it is clear that the incentive was for a particular period and the date of grant of incentive was relevant for this purpose. What is relevant to notice is that as provided under the head “Sales Tax Incentives” clause (d), no industrial unit was entitled to enjoy the benefit of sales tax incentive scheme without registering itself under the scheme with the Industries Commissioner. Under the circumstances, this Court is of the opinion that registration of an

industrial unit under the scheme before the date of expiry of the scheme had direct nexus to the benefits envisaged by the scheme and was a substantive condition which was required to be fulfilled by a unit for the purpose of getting the benefits under the scheme.

5. On the basis of decision rendered in **Mangalore Chemicals & Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes and others** reported in **AIR 1992 SC 152**, it was argued by the learned counsel for the petitioners that filing of application for registration before expiry of the scheme should not be treated as a condition fundamental to the policy underlying the scheme of deferred payment of tax and therefore, the reliefs claimed in the petition should be granted to the petitioners. In *Mangalore*

Chemicals & Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes and others (supra), the State Government issued a Notification on June 30, 1969, and provided certain incentives to entrepreneurs starting new industries in the State pursuant to State's policy for rapid industrialization. The Notification contained a package of reliefs and incentives including one concerning relief from payment of sales tax. By subsequent Notification, it was interalia provided that the industries claiming benefit had to secure prior permission of the assessing authority to withhold the tax subject to the Government's permission. The State Government held that the appellant before the Supreme Court was not entitled to benefit under the scheme because the permission of the Government, as contemplated by subsequent Notification, was not obtained. In the

said case, there was no dispute before the Supreme Court that the appellant was entitled to the benefit of the Notification dated June 30, 1969. There was also no dispute that the refunds were eligible to be adjusted against sales tax payable for respective years. The only controversy was whether the appellant not having actually secured prior permission was entitled to adjustment having regard to the words of the subsequent Notification dated August 11, 1975, namely, "*...Until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds....*" The stand of the State Government was that no doubt the appellant was eligible and entitled to make adjustments and there was also no impediment in law to grant such permission, but as the Government had not given the permission,

the appellant was not permitted to adjust. On interpretation of the scheme dated June 30, 1969, the Supreme Court held that the subsequent Notification which contained condition of prior permission envisaged a procedure to give effect to the exemption and was not substantive in nature. In the considered opinion of this Court, the principle laid down by the Supreme Court in the abovequoted decision is not applicable to the facts of the case because in no uncertain terms, it has been laid down in the scheme under consideration that no industrial unit shall be entitled to enjoy the benefit of sales tax incentive scheme without registering itself under the scheme with the Industries Commissioner. A unit was eligible to be registered under the scheme only if application was made before the expiry of the scheme and not thereafter.

6. It is not the case of the petitioners that the requirement that a unit, considering itself eligible, should make application for registration before the expiry of the scheme is either unreasonable or arbitrary or unwarranted. Therefore, the petitioner No.1-Company which had not applied for registration before the expiry of the scheme would not be entitled to registration nor would be entitled to the incentives provided by the scheme.

7. As observed earlier, the petitioners had made a detailed representation to the Industries Commissioner pursuant to the direction of the High Court in Special Civil Application No.4250 of 2004. That representation has been disposed of by assigning detailed reasons. One of the reasons assigned for rejecting the prayer

made by the petitioners is that the requirement under the scheme for registration was neither technical nor procedural and as the petitioner No.1-Company had not applied for registration before the expiry of the scheme in terms of the Government Resolution, the petitioner No.1-Company was not entitled to benefits under the scheme. It may be mentioned that in the Government Resolution dated April 29, 2000, it was nowhere provided that the units were exempted from any of the conditions laid down in the original Government Resolution dated September 11, 1995, and therefore, the petitioners were not justified in proceeding on the presumption that the petitioner No.1-Company was not required to apply before expiry of the scheme in question. The order dated April 13, 2006, which is impugned in the instant petition, makes

it clear that other reasons have also been assigned by the competent authority for denying the benefit of the scheme to the petitioners. The reasons which were indicated in the decision dated October 4, 2002, have been reiterated and it is also stated that no new single project of the petitioner No.-Company had investment of more than 100 crores and hence independently no project was eligible to the status of prestigious unit. It is true that the State level high power committee had recommended to give benefits to the petitioner No.1-Company under the scheme. However, there is no manner of doubt that those were the recommendations made by the said committee to Gujarat Industrial Promotion Board. The said committee had no power to condone the breach of condition of Government Resolution in question and therefore, on the basis of

recommendations of the said committee, the petitioner No.1-Company was not entitled to registration as a prestigious unit in view of the fact that the application for registration was made after the scheme was over. The scheme envisaged grant of certain benefits subject to fulfillment of certain criteria. One of the criterias was registration of the unit either as a premium unit or as a prestigious unit. If the reliefs claimed in the petition are granted, it would amount to modifying the terms of the scheme which is not permissible to a Court exercising powers under Article 226 of the Constitution. It is well settled principle of law that a person who claims benefits under an incentive scheme has to establish his rights under the scheme. If the unit claiming benefits is not within the plain terms of the scheme, it cannot claim the

benefits, calling in aid any supposed intention because the language of scheme granting incentives has to be given effect to when certain requirements are prescribed by an incentive scheme as preliminary to the acquisition of a right or benefit conferred by the scheme. Such prescriptions are mandatory for acquisition of the benefit. The petitioners have failed to establish that in terms of the incentive scheme, the petitioner No.1-Company was entitled to the benefit of Sales Tax Deferment and therefore the reliefs claimed in the petition cannot be granted. The decision rendered by the Industries Commissioner which is impugned in the petition can neither be regarded as erroneous or arbitrary or perverse so as to call for interference of this Court in the present petition which is filed under Article 226 of the Constitution.

8. The net result of the above discussion is that there is no substance in the petition and therefore, same deserves to be dismissed.

9. For the foregoing reasons, the petition fails and is dismissed.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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